

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Lonny Bristow,
Plaintiff

Case No. C-1-07-401

vs

William A. Eleby,
Defendant

**REPORT AND
RECOMMENDATION**
(Dlott, J.; Hogan, M.J.)

This matter is before the Court upon Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction (Doc. 8); and Defendant's Memorandum in Opposition to Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction (Doc. 13). Plaintiff, an inmate at Southern Ohio Correctional Facility ("S.O.C.F."), brings this action claiming that Defendant violated his rights under the Eighth Amendment. Plaintiff seeks an order either prohibiting S.O.C.F. from housing Plaintiff at the same institution as inmate Steve Hamilton, namely S.O.C.F., or requiring that Plaintiff be placed in protective control at another institution. (Id.).

In determining whether to issue a temporary restraining order, this Court must balance the following factors:

1. Whether the party seeking the injunction has shown a substantial likelihood of success on the merits;
2. Whether the party seeking the injunction will suffer irreparable harm absent the injunction;
3. Whether an injunction will cause others to suffer substantial harm; and
4. Whether the public interest would be served by a preliminary injunction.

U.S. v. Bayshore Associates, Inc., 934 F.2d 1391, 1398 (6th Cir. 1991); *In Re King World Productions, Inc.*, 898 F.2d 56, 59 (6th Cir. 1990); *Project Vote! V. Ohio Bureau of Employment Services*, 578 F. Supp. 7, 9 (S.D. Ohio 1982) (Spiegel, J.). See also *Southern Milk Sales, Inc. v. Martin*, 924 F.2d 98, 103 n.3 (6th Cir. 1991); *Newsom v. Norris*, 888 F.2d 371, 373 (6th Cir. 1989); *Frisch's Restaurant, Inc. v. Shoney's, Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985).

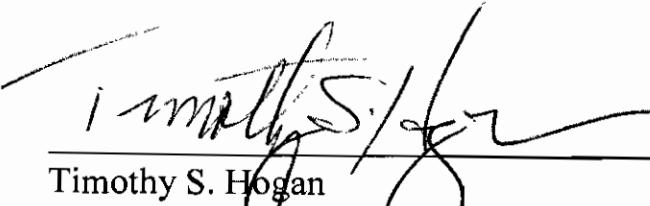
The Court finds that Plaintiff has neither alleged facts, nor submitted evidence, warranting an immediate injunction in this matter. Plaintiff has made no attempt to apply the above factors to his situation. Plaintiff has failed to present any evidence showing he has a substantial likelihood of success on the merits of his constitutional claim, or that he will suffer irreparable harm absent an immediate injunction.

A preliminary injunction is also not warranted in this case because the purpose of a preliminary injunction, that is, to preserve the status quo until a trial on the merits can be held, *see Martin*, 924 F.2d at 102, would not be served. The present status quo in this case is, according to Plaintiff, that he has suffered a violation of his constitutional rights under the Eighth Amendment. The remedy Plaintiff presently seeks is more than an injunction maintaining the status quo; he seeks an Order from this Court requiring Defendants to affirmatively correct constitutional deficiencies yet to be proven. Such affirmative relief is generally beyond the scope and purpose of preliminary injunctive relief. *See id.*

IT IS THEREFORE RECOMMENDED THAT Plaintiff's motion (Doc. 8) be DENIED.

Date:

11/9/07


Timothy S. Hogan
United States Magistrate Judge

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